

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 64956-6-I
Respondent,)	
)	DIVISION ONE
v.)	
)	UNPUBLISHED OPINION
RENATA LEE ABRAMSON,)	
)	
Appellant.)	FILED: August 2, 2010
)	

Appelwick, J. — Abramson appealed her convictions for multiple controlled substance violations and both firearm and school zone enhancements. The Court of Appeals vacated the school zone enhancement but affirmed the other enhancement and convictions, remanding the case to the trial court to correct the judgment and sentence. The trial court corrected the sentence and entered a standard range sentence with the firearm enhancement. Abramson appeals again, arguing her appellate counsel was ineffective for failing to supplement the record. Because her standard range sentence is not appealable, Abramson must pursue her ineffective assistance claim in a personal restraint petition. We affirm.

FACTS

Renata Abramson was convicted of delivery of methamphetamine, possession of methamphetamine, and possession of methamphetamine with intent to deliver, with enhancements for presence in a school zone and being armed with a firearm. She appealed, arguing, inter alia, that her enhancements should be vacated. State v. Abramson, noted at 146 Wn. App. 1001, 2008 WL 2810971, review denied, 165 Wn.2d 1025, 203 P.3d 381 (2009). While deliberating over the case, Division Two ordered Abramson's appellate counsel to supplement the record with a complete set of jury instructions so it could review Abramson's argument regarding the firearm enhancement. Id. at *12 n.7. Counsel did not supplement the record, and Division Two noted as much in its opinion, finding that it was able to decide the enhancement issue without counsel's supplement. Id. The Court of Appeals affirmed the convictions and the firearm sentence enhancement. Id. at *14. It reversed the school zone enhancement. Id. It directed the trial court on remand strike the school zone enhancement and "correct her judgment and sentence." Id.

At the resentencing, Abramson's original appellate counsel, Lance Hester, could not appear. Casey Arbenz appeared on behalf of Abramson and objected to the firearm enhancement. He stated that the trial court had not included the jury instructions in the original clerk's papers or otherwise produced them, and that Hester had asked Arbenz to "make an on-the-record objection to the sentencing enhancements, for the possibility of future appeals." The court sentenced Abramson to a standard range sentence of 100 months, plus 36 months for the firearm enhancement, for a total of 136 months. Abramson

appeals her sentence, arguing her appellate¹ counsel was ineffective for failing to supplement the record as requested by the Court of Appeals during the first appeal.

DISCUSSION

A “trial court’s decision regarding the length of a sentence within the standard range is not appealable because as a matter of law there can be no abuse of discretion.” State v. Kinneman, 155 Wn.2d 272, 283, 119 P.3d 350 (2005) (quoting State v. Mail, 121 Wn.2d, 707, 710, 854 P.2d 1042 (1993)) (internal quote marks omitted). While a defendant can challenge the procedure by which the court imposes the standard range sentence, the defendant must show either that the court refused to consider information mandated by RCW 9.94A.585(1) or that the defendant objected to consideration of certain information and that no evidentiary hearing was held. Mail, 121 Wn.2d at 713; State v. Ammons, 105 Wn.2d 175, 182–83, 713 P.2d 719, 718 P.2d 796 (1986). Abramson has not argued that the trial court erred in either of these respects. Because her sentence is a standard range sentence, it is not appealable. Kinneman, 155 Wn.2d at 283.

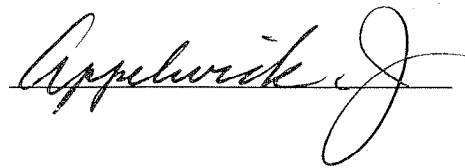
Further, the trial court’s discretion to resentence on remand is limited by the scope of the appellate court’s mandate. See State v. Collicott, 118 Wn.2d 649, 658–60, 827 P.2d 263 (1992). The trial court here did not act outside the

¹ Her issue statement says “trial counsel,” but it appears she really means appellate counsel, as the court’s opinion directed her appellate counsel to supplement the record, not trial counsel. She also discusses the ineffectiveness of appellate counsel throughout her brief, and not the ineffectiveness of trial counsel.

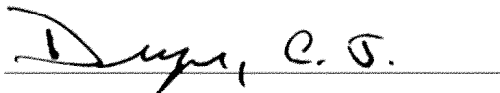
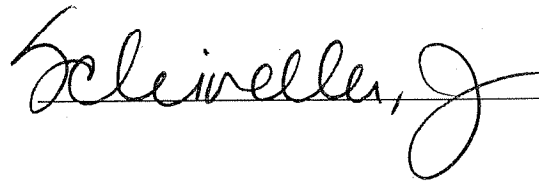
scope of the appellate mandate. The Court of Appeals reversed the school zone enhancement, affirmed the firearm enhancement, and directed the trial court to “correct her judgment and sentence.” Abramson, 146 Wn. App. at 14. The trial court was without authority to consider any arguments regarding the propriety of the enhancements.

The claim of ineffective assistance of counsel for conduct at the resentencing hearing is more properly brought in a personal restraint petition.

We affirm.

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WE CONCUR:

A handwritten signature in cursive script, reading "Dwyer, C. J.", written over a horizontal line.A handwritten signature in cursive script, reading "Schweidler, J.", written over a horizontal line.